

**Date:** 25 February 2016

**Item:** Semi-Permanent Structures on the TfL Footway

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## **This paper will be considered in public**

### **1 Summary**

- 1.1 This paper sets out the legal position relating to the placement by third parties of semi-permanent structures, such as coffee stalls, on the TfL footway.
- 1.2 It also outlines the legal rights afforded to the Highway Authority, the Street Trading Authority and the freehold owner.

### **2 Recommendation**

- 2.1 **The Panel is asked to note the paper.**

### **3 Background**

- 3.1 This paper was requested by a Panel Member following the appearance of a coffee van in a site on the far south end of the southbound footway of Blackfriars Bridge in what appeared to be a new street trading site.
- 3.2 Concern was expressed about accessibility and TfL's ability to protect against encroachment on the footway.
- 3.3 It was further suggested that TfL investigate the potential of utilising such sites as a revenue raising opportunity.

### **4 Current Situation**

#### **Legal authority**

- 4.1 The Highways Act places the highway authority under a duty to assert and protect the rights of the public to use and enjoy the highway<sup>1</sup>. Should any highway authority tolerate gradual erosion of the highway, including by obstructive street trading, this could constitute a failure of duty.
- 4.2 TfL is the highway authority for the entire Transport for London Road Network (TLRN), and the highway always encompasses both the carriageway(s) and the footway(s). The borough is the highway authority for all highways in their area with the exception of the TLRN and any Trunk Roads<sup>2</sup>.

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<sup>1</sup> [S130 Highways Act 1980](#)

<sup>2</sup> [S1 Highways Act 1980](#)

- 4.3 Street trading licences are granted by the London local authorities under the London Local Authorities Act 1990, irrespective of who the highway authority is. Before granting any licence on the TLRN the area to which the licence relates must first be designated for street trading purposes by formal resolution of the local authority. Any designation of a street for trading by a local authority after the formation of TfL requires the ‘consent’ of TfL<sup>3</sup>. Similar circumstances apply to pavement cafes<sup>4</sup>.
- 4.4 Legal authority to place temporary structures on the public highway is not influenced by the ability to demonstrate title to the underlying subsoil (ie. the freeholder). Highway limits are established by historic use not by land ownership.
- 4.5 Two complications exist in respect of TfL’s ability to control the positioning of semi-permanent structures on the TLRN:
- (a) If the area was designated for street trading purposes prior to the formation of TfL then there was and is no requirement to obtain TfL’s consent to street trading in that area. TfL does not have the legal right to remove the entitlement. This is the case for the coffee stall on the south side of Blackfriars Bridge. Even if a borough wanted to designate a new area on the TLRN for street trading, although TfL’s consent would be needed for the designation, TfL has no role in relation to the consideration of applications for individual street trading licences.
  - (b) If the highway does not extend back as far as the building line then in effect the building has an unfenced front garden. In that instance the highway authority have no remit over the land with responsibility remaining with the freeholder. The rear section of the footway under the railway bridge over Blackfriars Road (outside Palestra) is an example of this; National Rail owns the land immediately adjacent to the bridge footing.
- 4.6 In considering application of their powers, all authorities must be mindful of their obligations under s17 of the Crime and Disorder Act, for example not enabling the creation of hiding places, not creating opportunities for concealment of explosive materials close to key transport infrastructure and the like. In addition, by section 25 (4) of the London Local Authorities Act 1990 a street trading licence shall not be granted “unless the borough council are satisfied that there is enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons or vehicular traffic using the street”. Street trading can also have implications for people with visual impairment, or reduced mobility.

### **Coffee stall on Blackfriars Bridge**

- 4.7 The London Borough of Southwark (LBS) did not consult with TfL on the granting of a street trading licence to this coffee stall on the basis that it was already an established pitch. They have subsequently provided evidence that this pitch was agreed and established prior to the formation of TfL, to a size of 9ft x 6ft. The current coffee stall is comfortably within this footprint. They have also provided

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<sup>3</sup> [S24 London Local Authorities Act 1990](#)

<sup>4</sup> [S115H\(4\) Highways Act 1980](#)

pictorial evidence of the occupant of the pitch in 2012 (Appendix 1) which is visibly less desirable than the current commercial enterprise.

- 4.8 In recent years the pitch has been in abeyance, but this does not change LBS's legal rights to issue licences for street trading in the space.
- 4.9 TfL have made representations to LBS on the basis of our duties as the Highway Authority to the effect that the pitch could "cause undue interference or inconvenience to persons or vehicular traffic using the street...". TfL stated that the footprint in this location is in close proximity to the entrance to the riverside walk, the proximity to the bus stop boarding and alighting area, and the width of footway that is obstructed.
- 4.10 LBS's officers hold a different view and do not feel that it falls foul of these criteria. If, as the Highway Authority, we still consider this to be a safety and/or operational issue, we will need to consider whether there is any further action that TfL can take. LBS are willing to seek compromise by requesting that the associated gazebo in this location does not extend beyond the footprint of the coffee equipment. LBS have also agreed to consult with TfL in future if pitches that were in abeyance are re-activated.
- 4.11 Space on the footway in this location was further constricted by a conflict with the Cycle Superhighway traffic management, although TfL does not believe that this will be an issue once the works are complete.

### **Operation Clearway**

- 4.12 Operation Clearway has provided focus on the regulation of street trading on the routes that have so far been selected. This is being rolled out across the TLRN in the coming months through a partnership approach with the local authorities.
- 4.13 Part of this process is meeting with the local authority teams that manage street trading functions to obtain a list of all approved street trading sites in the borough, including those activities which were established prior to TfL's formation.
- 4.14 Local authorities have demonstrated willingness to engage and collaborate with TfL on its clearway objectives by providing the information required to enforce against unlawful highway obstruction activities on the TLRN.

### **Commercial Opportunities**

- 4.15 Local authorities can issue consents to trade under a number of provisions, including historic charters and local acts, but any revenue received by the authority should only be that of covering the administration costs of the Street Trading team and process (ie. it should not be profitable for the authority). Street trading can in the right circumstances improve the vibrancy of an area and support its overall economic viability.
- 4.16 TfL has an express power to provide, maintain and operate facilities for recreation or refreshment or both on a relevant GLA road<sup>5</sup>. It may also enter into arrangements with third parties to undertake activities that TfL is not empowered

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<sup>5</sup> [S43 Transport for London Act 2008](#)

to do, provided the agreement also includes activities that TfL is empowered to undertake itself<sup>6</sup>. The legal position on TfL's charging powers is complex and would need to be considered in more detail if this option is to be pursued.

- 4.17 The freeholder of any given area of land is in a position to maximise commercial gain from any trading.
- 4.18 TfL has looked to exploit the commercial opportunities and promote higher standards of street trading through the Street Dots initiative. Street Dots, led by Commercial Development in TfL, is currently focussed on land which is not adjacent to the TLRN, thus removing the requirement for a street trading licence. The initiative is focussed on land to which TfL holds the freehold.
- 4.19 A competitive tender process will commence in May 2016 to appoint a partner(s) to take forward the concept of flexible space utilisation as piloted in two locations by the Street Dots initiative (Vauxhall which is live and Shadwell which will be live soon). It is hoped the partner(s) will be in place for the summer.

**List of appendices to this report:**

Appendix 1 – Trading pitch on the south side of Blackfriars Bridge in 2012

**List of Background Papers:**

None

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<sup>6</sup> [S156\(1\)\(b\) GLA Act 1999](#)

Appendix 1

